Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

COMMENTS OF SBC COMMUNICATIONS INC.

Jeffry A. Brueggeman
Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, NW, SUITE 1100
Washington, D.C. 20005
(202) 326-8911 – phone
(202) 408-8745 – facsimile

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COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its comments in response to the Commission's Further Notice of Proposed Rulemaking in this proceeding.[1] SBC contributes to the universal service fund as an incumbent local exchange carrier (ILEC), as an interexchange

[1] *Federal-State Joint Board on Universal Service et al.*, CC Docket Nos. 96-45 et al., Further Notice of Proposed Rulemaking and Report and Order, FCC 02-43 (rel., Feb. 26, 2002) (*FNPRM*).

carrier (IXC), as a competitive local exchange carrier (CLEC) and as a broadband services provider.

In its comments, SBC proposes that the Commission assess universal service contributions on all providers of interstate telecommunications, regardless of the type of service provided and the technology platform used by the service provider. The level of the universal service contribution is based on the number and capacity of Qualifying Service Connections (QSCs) for access and interstate transport services provided to end users, as well as a percentage of revenues from "occasional use" interstate services. SBC also proposes to require that all providers that elect to recover their universal service contributions must do so through an explicit line-item charge on the end user's bill.

I. Introduction and Summary

The Commission initiated the *FNPRM* to seek more focused comment on whether to assess universal service contributions based on "the number and capacity of connections provided to a public network," as well as additional comment on reforming the current contribution and recovery mechanism.[2] As the Commission considers various reform proposals, it should bear in mind that, from the perspective of an interstate telecommunications provider, the universal service mechanism is a financial burden that affects its overall business and its relationship with individual customers. To the extent the contribution and recovery process is complicated, causes unintended problems for providers or provides opportunities to game the process, this merely adds to the burden and increases a provider's incentive to minimize or avoid its universal service obligation. Therefore, one of the Commission's priorities in this proceeding must be to establish a fair and equitable contribution and recovery mechanism that does not

[2] *Id.*, at ¶ 2.

saddle certain classes of providers and their customers with a disproportionate share of the universal service burden.

In the *FNPRM*, the Commission identified a number of particular concerns about the current contribution and recovery process. One area of concern is the long-term stability and sufficiency of universal service support. The Commission notes that there have been a number of recent fluctuations in the contribution base, including a recent decline in interstate revenues experienced by some of the large incumbent IXCs and a decline in assessable revenues during the first half of 2001.[3] The definition of the contribution base is an issue that also is being addressed in a related proceeding to consider whether all competing providers of broadband Internet access should be required to contribute to the federal universal service fund.[4]

Another area of concern is maintaining an equitable and manageable universal service contribution mechanism in a rapidly evolving market. The Commission is concerned that market developments such as bundled service offerings (*e.g.*, flat-rate packages that include both local and long distance services), mobile wireless calling plans and new services like "voice over Internet" are making it increasingly difficult to identify interstate revenues.[5] All of these market developments are "increasing the strain" on the regulatory distinctions that are used to determine the amount of a provider's contribution under the current mechanism.[6]

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[3] *Id.*, at ¶¶ 7-8.

[4] *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking, FCC 02-42 (rel. Feb. 15, 2002) (*Broadband NPRM*).

[5] *FNPRM* at ¶ 12.

[6] *Id.*, at ¶¶ 12-13.

In addition to contribution issues, the Commission is concerned about the process by which providers recover their universal service contributions from end users. As the Commission recognizes, even though the contribution factor is uniform for all providers, "universal service line items to consumers may vary widely among contributors, and often significantly exceed the amount of the contribution factor."[7] For example, after the Commission established a contribution factor of 6.882 percent last year, AT&T raised its residential universal service line item to 12 percent.[8] These recovery issues have generated a great deal of negative publicity and created significant confusion among consumers.

SBC supports the Commission's goal of establishing a universal service contribution and recovery mechanism that is stable and easy to administer in a rapidly evolving market. At the same time, however, the Commission must establish a fair and equitable universal service mechanism that is technologically and competitively neutral. The universal service contribution base should be broadly defined so that interstate telecommunications activity generates the same universal service obligation, regardless of a provider's technology platform, organizational structure, marketing practices or position in the market. Moreover, the Commission should establish a uniform contribution and recovery mechanism that will help to minimize confusion for end users, who are the ultimate benefactors (and usually the beneficiaries) of the universal service fund. It also should ensure that providers cannot manipulate the public policy program of collecting universal service support in order to gain a competitive advantage in the marketplace. *Under no circumstances should end users make decisions about their choice of interstate*

[7] *Id.*, at ¶ 18.

[8] *Id.*

telecommunications provider based on the amount of the carrier's universal service recovery charge, which is effectively a regulatory fee.

SBC and BellSouth have jointly developed a proposal (Joint Proposal) for assessing universal service contributions based on the number and capacity of interstate connections that is consistent with these principles and responsive to the Commission's concerns.[9] The primary elements of the Joint Proposal are as follows:

- All providers of telecommunications, including common carriers, private carriers, Internet Service Providers (ISPs) and other content providers, regardless of technology platform or facilities ownership, should contribute based on their interstate telecommunications activities.

- Each retail relationship with a QSC provider – including Access QSCs and Interstate Transport QSCs – generates a contribution obligation. An end user may establish multiple retail relationships or purchase an integrated or bundled service from a single provider of interstate telecommunications. In either case, the total amount of the universal service contribution is the same.

- The amount of the contribution increases as the capacity of the QSC increases. Separate contributions are assessed for connections to circuit-switched networks and packet-switched networks.

- A QSC provided on an occasional use basis (*e.g.*, calling card) will be determined by applying a contribution factor to end user interstate telecommunications revenues.

- Lifeline services and *de minimis* interstate telecommunications activities are exempt from the contribution obligation.

The transition from a contribution based on revenues to a contribution based on the number and capacity of QSCs will result in significant changes to the universal service reporting process. Instead of having to report revenues five times a year and being assessed contributions

[9] A detailed description of SBC's and BellSouth's proposed contribution mechanism is attached hereto as Attachment A. The Joint Proposal does not include the end user recovery mechanism discussed in SBC's Comments.

with a six-month lag, providers will contribute based on their current number of QSCs as of the prior month. This will simplify the reporting process and eliminate the lag problem.

SBC also proposes to require that all providers that elect to recover their universal service contributions must do so through a uniform line-item charge. This charge should include a reasonable percentage for uncollectibles and billing and administrative costs. However, providers will no longer have to inflate the amount of the line-item charge to make up for declining interstate revenues because there is no lag in the proposed connection-based contribution mechanism. By mandating a uniform line-item charge, the Commission will eliminate the customer confusion, arbitrage and stability problems caused by the current recovery process.

The Commission should not adopt a contribution mechanism that allows entire classes of interstate telecommunications providers — particularly the *largest* providers of interstate telecommunications services — to avoid contributing to the universal service fund. Such a methodology is *per se* unlawful, given the requirement of section 254(d) that "*every* telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service on an "equitable and nondiscriminatory basis."[10] The Commission cannot avoid this statutory requirement by concluding that a provider can avoid making a contribution on one class of interstate services simply because it may contribute on the basis of other services it provides. Nor can such a methodology be justified by the narrow exemption created by Congress in section 254(d), which is for the limited purpose of allowing the Commission to forego assessing contributions on providers with a *de minimis* amount of interstate activities.

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[10] 47 U.S.C. § 254(d) (emphasis added).

II. The Commission Should Adopt a Uniform Contribution and Recovery Mechanism Based on the Number and Capacity of Interstate Network Service Connections

As the Commission recognizes in the *FNPRM*, many providers are concerned about the administrative costs, recovery problems and disparate treatment of comparable services that result from the current universal service contribution and recovery mechanism. It is not surprising, therefore, that providers do not want to contribute to universal service if they are not contributing under the current mechanism and providers that are contributing want to minimize their contributions. There are a number of reasons why SBC has an incentive to propose a more balanced contribution and recovery mechanism than other providers. SBC contributes to universal service as an incumbent LEC, IXC, CLEC and broadband services provider, which means it must weigh the impact of the contribution and recovery mechanism on various market segments. In addition, SBC and other incumbent LECs are the only providers that currently are regulated in their recovery of universal service contributions. As a result, SBC would benefit from implementation of a uniform contribution and recovery mechanism that eliminates the potential for non-regulated providers to gain a competitive advantage in the market by avoiding contributions or manipulating the recovery process.

A. Contribution Mechanism

SBC and BellSouth have jointly developed a proposal for assessing universal service contributions based on the number and capacity of interstate connections that is responsive to the Commission's concerns about the current contribution mechanism. Below, SBC provides an overview of this contribution mechanism, which is described in more detail in Attachment A.

Interstate Telecommunications Activity. All providers of telecommunications, including common carriers, private carriers, ISPs and other content providers, regardless of technology platform or facilities ownership, should contribute to universal service based on their interstate telecommunications activities. SBC recognizes that the Commission is conducting a separate proceeding to consider the issue of whether all providers of broadband Internet access should be required to contribute to universal service. However, the Commission also recognizes in the *FNPRM* that this proceeding involves a number of related issues, such as whether a "connection" should be defined to include packet-switched lines and whether services such as DSL should be considered independent connections to a public network.[11] As discussed further below, the Joint Proposal defines eligible services by functionality, rather than by technology, and includes both circuit-switched and packet-switched services in the contribution mechanism. Packet-switched services that are telecommunications services are already included in the Commission's universal service contribution mechanism and should continue to be included in the contribution base. In the *Broadband NPRM*, SBC will fully address the legal and policy justifications for including all competing broadband Internet access services (*e.g.,* cable modem, wireless and satellite services) in the universal service contribution base. For purposes of this proceeding, the Joint Proposal is designed to accommodate the inclusion of these services in the contribution mechanism.

The Joint Proposal also includes ISPs and other content providers in the contribution mechanism to the extent they provide interstate telecommunications to end users. SBC believes it is more appropriate to treat ISPs like IXCs, rather than end users, for universal service purposes. Even though an ISP may purchase telecommunications services from a LEC where it does not own its own broadband information access facilities, it also provides

[11] *FNPRM* at ¶¶ 4, 41-42.

telecommunications to its end users.[12] An ISP also provides end users with interstate transport over a packet-switched network associated with the public Internet. In order to maintain consistency with the contribution mechanism for traditional circuit-switched traffic, the Commission should require ISPs and other content providers to contribute to universal service based on the provision of broadband information access and interstate transport services to an end user.

Qualifying Service Connections. A QSC is a retail relationship with a service provider that gives an end user the right to connect to its network, regardless of whether that network uses wireless, coaxial cable, satellite, packet-switching or some successor technology that is yet to be developed. Each retail relationship with a QSC provider — including Access QSCs and Interstate Transport QSCs — generates a contribution obligation.

Consistent with these principles, Access QSCs include any type of access to a circuit-switched or packet-switched interstate transport network. Examples of Access QSCs include switched access and special access over the wireline telephone network, cable telephony, wireless, one-way paging, dedicated Internet access (*e.g.*, DSL, cable modem, satellite, wireless data) and a private line access link to a packet-switched data network or other private network. Interstate Transport QSCs include traditional IXC long distance service, private line transport service, packet-switched transport service and the interstate transport associated with Internet traffic or other content provided over an Internet connection. Both Access QSCs and Interstate Transport QSCs should be defined broadly to encompass future technologies and services that are not yet in the market.

[12] For the same reason that a reseller of long distance service is required to contribute to universal service, an ISP that provides broadband information access and interstate transport services should be required to contribute, even if it does not own its own facilities.

The Joint Proposal accommodates situations where an end user establishes multiple retail relationships or purchases an integrated or bundled service from a single provider of interstate telecommunications. In either scenario, the total amount of the universal service contribution and the resulting recovery charge is the same. For example, an end user may establish a retail relationship with a LEC for exchange access (Access QSC) and a separate retail relationship with an IXC for interstate transport (Interstate Transport QSC). Likewise, an end user may establish a retail relationship with a broadband Internet access provider (Access QSC) and a separate retail relationship with an ISP for interstate transport associated with Internet traffic (Interstate Transport QSC). In other cases, an end user may purchase an integrated interstate service from a single provider, such as wireless service that includes both access and interstate transport or an ISP's broadband Internet access service that includes both broadband information access and interstate transport. The contribution is always assessed on the retail provider of interstate telecommunications, and a single provider may be assessed multiple contributions for an integrated service offering.

Capacity-Based Contributions. The amount of the contribution increases as the capacity of the QSC increases. Separate contributions are assessed for connections to circuit-switched networks and packet-switched networks. Higher bandwidth services should receive a larger allocation of the contribution obligation because they represent more interstate telecommunications activity than lower bandwidth services and the revenues generated by a service typically increase as capacity increases. The "capacity units" assigned to various bandwidth levels of QSC is as follows:

- One-way paging = 1/2
- Asymmetrical less than or equal to 6 Mbps = 1

- Asymmetrical greater than 6 Mbps = 2
- Centrex less than or equal to 64 Kbps = 1/9
- Less than or equal to 64 Kbps = 1
- Greater than 64 Kbps, less than 1.5 Mbps = 2
- Greater than or equal to 1.5 Mbps, less than 45 Mbps = 5
- Greater than or equal to 45 Mbps = 40

These capacity unit tiers are quite similar to the multiline business connection tiers discussed in the *FNPRM*.[13]

Occasional Use Connections. A QSC provided on an occasional use basis (*e.g.*, calling card or dial-around long distance calling) will be determined by applying a percentage-based contribution factor to end user interstate telecommunications revenues. The allocation for occasional use QSCs will be determined prior to the allocation for Access QSCs and Interstate Transport QSCs.

Calculation of Contribution Factor. The contribution factor is calculated on an annual basis by first applying a percentage-based contribution factor to occasional use end user interstate telecommunications revenues.[14] The total amount of these contributions is deducted from the projected universal service funding requirement. Then, the residual amount is divided by the total annualized number of QSCs to produce the flat-rated contribution factor. Each provider will calculate its monthly contribution by multiplying the percentage-based contribution

[13] *FNPRM* at ¶¶ 52-53.

[14] For example, the current contribution factor of 7.280% could serve as a reasonable starting point for the new occasional use contribution factor.

factor by its occasional use revenues from the prior month and multiplying the flat-rate contribution factor by its total number of QSCs from the prior month.

Exemptions. Lifeline services and *de minimis* interstate telecommunications activities are exempt from the contribution mechanism. The *de minimis* exemption should continue to be based on an annual contribution threshold amount. For example, a $12,000 exemption threshold would cover any provider with less than $1,000 worth of capacity units on a monthly basis.

B. Reporting Requirements

The transition from a contribution based on revenues to a contribution based on the number and capacity of QSCs will result in significant changes to the universal service reporting process. Instead of reporting revenues five times a year and being assessed contributions with a six-month lag, providers will contribute on the basis of their occasional use revenues and QSC capacity units from the prior month. A provider will calculate its own monthly bill and report its total QSC capacity units at the same time it submits its monthly payment. This proposal will simplify the reporting process, eliminate the lag problem and reduce administrative costs by eliminating the need for the universal service administrator to generate monthly bills.

C. End User Recovery

SBC proposes to require that all providers that elect to recover their universal service contributions must do so through a uniform line-item charge that corresponds to the prescribed flat-rated contribution factor for QSCs. In the case of "occasional use" types of services, providers are required to charge the prescribed percentage-based contribution factor. Because there is no lag between the reporting period and the contribution, there is no need for providers to inflate the amount of the line item charge to make up for declining interstate revenues. Thus, SBC's proposal eliminates many of the customer confusion, arbitrage and stability problems caused by the current contribution and recovery mechanism.

The Commission also should establish a safe harbor that allows providers to recover a reasonable incremental percentage for uncollectibles and billing and administrative costs. A fixed percentage that serves as a safe harbor represents a balanced approach. Even though the contribution mechanism requires providers to pay assessments on connections regardless of whether the provider is actually paid for the connection, a safe harbor that allows the universal service contribution and recovery mechanism to operate in a more revenue-neutral manner from a provider's perspective will reduce the incentive to game the process.

III. SBC's Proposal is Consistent With Section 254 and Ensures the Ongoing Stability of the Universal Service Fund

SBC's proposed universal service contribution and recovery mechanism is consistent with the requirements of section 254 and provides a number of important benefits. *First*, SBC's and BellSouth's proposed contribution mechanism provides a stable universal service fund in an evolving market by assessing contributions on all interstate telecommunications activity. As SBC will discuss further in the *Broadband NPRM*, it is essential that the Commission exercise its discretionary authority under section 254(d) and expand the contribution base to include all competing providers of broadband Internet access. Congress granted the Commission the authority to include providers of "interstate telecommunications" in the contribution base for the express purpose of addressing traditional bypass of the public telephone network from alternative networks (*e.g.*, private carriers). In an era of convergence, these alternative networks encompass a broad range of technologies — including wireless, packet-switched networks and the Internet — that are creating the same type of bypass issues that Congress was concerned about when it gave the Commission the discretion to assess contributions on private carriers. The Joint

Proposal anticipates the inclusion of packet-switched services such as broadband Internet access in the universal service contribution base and incorporates such services into the contribution mechanism.

The Commission also should ensure that, to the greatest extent possible, its contribution rules have no impact on end user buying decisions. As discussed further below, proposals that exempt classes of interstate telecommunications providers from contributing to universal service or that permit regulatory arbitrage will distort the market and result in an inequitable shifting of the universal service contribution burden to those providers that are left holding the bag. To avoid this unlawful and unfair result, SBC and BellSouth have developed an equitable and administratively simple mechanism for assessing contributions on all providers of interstate telecommunications, including IXCs and ISPs. This serves the public interest by creating a contribution mechanism that is competitively and technologically neutral.

The Joint Proposal is consistent with the statutory universal service requirements set forth in section 254. It ensures that all providers of interstate telecommunications services contribute to universal service on an "equitable and nondiscriminatory" basis, as required by sections 254(b)(4) and 254(d). It also helps to satisfy the requirement of section 254(b)(5) that the Commission must establish a "specific, predictable and sufficient" universal service mechanism. By including all providers of interstate telecommunications in the contribution base, the Joint Proposal ensures that residential local telephone customers will not be forced to bear an unreasonable share of universal service costs as more and more customers migrate to alternative technology platforms (*e.g.*, the Internet) that are outside the scope of the current contribution mechanism.

Second, the Joint Proposal establishes a straightforward basis for assessing universal service contributions that does not rely on distinctions such as residential versus business connections, circuit-switched versus packet-switched connections, or interstate versus intrastate revenues. A connection-based contribution mechanism addresses the Commission's concern about fluctuating interstate revenues, as well as its concern about identifying interstate revenues in bundled service offerings. In short, SBC and BellSouth have attempted to remove all needless complexity from their proposal in order to minimize confusion and the potential for arbitrage and unintended consequences.

Third, a capacity-based contribution mechanism correlates to the amount of a provider's interstate telecommunications activities. It will generally be the case that a provider that offers higher bandwidth interstate services will be giving end users greater capability to engage in interstate telecommunications activities. Higher bandwidth services also tend to generate more interstate revenue, which provides an equitable basis for requiring providers of higher bandwidth services to make larger contributions to universal service. Thus, unlike other per-line or per-connection proposals, the Joint Proposal establishes a progressive contribution methodology.

Fourth, SBC's proposal simplifies the universal service reporting process and minimizes the opportunity for reporting variations. Currently, a provider must report its interstate end user telecommunications services revenues five times a year (four quarterly reports and an annual report). Six months after each quarterly report is filed, the universal service administrator generates monthly bills based on those revenues. SBC's proposal, by contrast, assesses contributions based on a provider's current number of QSCs. By eliminating the lag built into the current system, SBC's proposal addresses the concern that carriers with declining revenues must collect more than the prescribed contribution percentage from end users in order to be made whole. It also addresses the concern that, under the current contribution mechanism, a new entrant is not required to contribute for six months after it enters the market. The lag problem is not just an issue for the incumbent IXCs. SBC and other ILECs are faced with declining access lines (and associated interstate revenues) in the local market as a result of widespread competition. ILECs, however, have much less flexibility than IXCs to raise their prices or inflate their recovery charges to make up for the under-recovery of universal service contributions.

A connection-based contribution mechanism also avoids concerns about variations in the reporting of interstate revenues where similar services are being provided. Under the current system, CLECs are under no obligation to report any interstate revenues and wireless carriers are allowed to report a "safe harbor" amount that may be more (or significantly less) than their actual interstate revenues. A revenue-based assessment mechanism also creates problems by requiring providers to contribute on revenues that may be uncollectible. A requirement to report QSCs should eliminate the guesswork inherent in the current system and produce much more uniform and reliable reporting by providers.

Fifth, SBC's proposed universal service end user recovery process is "reasonable, fair, and understandable for consumers."[15] The current system — which regulates the ILECs' recovery of universal service contribution costs and gives other carriers virtually unlimited discretion regarding their cost recovery — leads to customer confusion and creates the potential for competitive manipulation of the universal service line item. In the *FNPRM*, Commission seeks comment on whether to require providers that elect to recover contributions through a separate line item to make that line item amount uniform for all customers.[16] SBC believes the

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[15] *FNPRM* at ¶ 89.

[16] *Id.*, at ¶ 95.

Commission should go further and require that all providers that elect to recover their universal service contributions must do so through a uniform line-item charge on the end user's bill.

SBC's proposal is consistent with section 254(e), which requires that universal service support should be explicit. In fact, the Fifth Circuit held that "the plain language of Section 254(e) does not permit the FCC to maintain implicit subsidies,"[17] and it determined that the Commission could not even *allow* carriers to recover universal service costs through access charges because such recovery constitutes an unlawful implicit subsidy.[18] The same reasoning supports a requirement that a provider's recovery of its universal service contribution should be an explicit line-item charge on the customer's bill. Such a requirement also ensures that a provider's recovery practices are consistent with the requirements of sections 201(b) and 202(a) of the Act.[19] The best way to guarantee that providers are not improperly shifting the burden of universal service recovery among customers is to mandate a uniform line item charge.

In addition, SBC's proposed contribution and recovery mechanism will help to reduce customer confusion. The contribution factor will change on an annual basis, rather than a quarterly basis. Moreover, the use of a uniform contribution charge avoids the need for most providers to make an adjustment to their recovery mechanism in order to avoid under-recovering their universal service contributions. Instead of reporting revenues five times a year and being assessed contributions with a six-month lag, providers will contribute based on the number of QSCs as of the prior month. This contribution can be passed through to end users without a lag-period adjustment, which will eliminate customer confusion and arbitrage concerns caused by

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[17] *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 425 (5th Cir. 1999) (*TOPUC v. FCC*).

[18] *Comsat Corp. v. FCC*, 250 F.3d 931, 938-39 (5th Cir. 2001).

[19] *FNPRM* at ¶ 95.

the wide variance of recovery mechanisms in use today. In addition, all new entrants will apply the contribution factor to their revenues as soon as they enter the market and exceed the *de minimis* exemption, which eliminates any concern that new entrants may be able to gain a competitive advantage from the universal service collection mechanism.

IV. The Commission Cannot Allow the Largest Providers of Interstate Telecommunications to Avoid Their Universal Service Obligation

The Commission should not adopt AT&T's and WorldCom's self-serving universal service contribution mechanism, which would *virtually eliminate* their own universal service contribution obligations. Any universal service contribution mechanism that allows entire classes of interstate telecommunications providers — particularly the *largest* providers of interstate telecommunications services — to avoid contributing to the universal service fund is *per se* unlawful. Section 254(d) provides that "*every* telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service on an "equitable and nondiscriminatory basis." Given this unambiguous statutory mandate, the Commission does not have the authority to establish a contribution mechanism that excludes all dial-around and calling card providers and all IXCs except to the extent they also provide exchange access service. The statutory scheme established by Congress requires that the Commission include all providers of interstate telecommunications services, and the Commission is not free to ignore the plain language of the statute congressional intent for reasons of administrative convenience.

Nor does the exemption provision of section 254(d) give the Commission the authority to establish a universal service contribution mechanism that creates a blanket exemption for entire classes of interstate telecommunications providers. The narrow exemption created by Congress is for the limited purpose of allowing the Commission to forego assessing contributions on providers with a *de minimis* amount of interstate activities. This is confirmed by the legislative history of section 254. The Joint Explanatory Statement for the universal service provisions of the 1996 Act stated that the Commission's authority to exempt providers from contributing to universal service should "only be used in cases where the administrative cost of collecting contributions from a carrier or carriers would exceed the contribution that carrier would otherwise have to make under the formula for contributions selected by the Commission."[20] The Commission previously relied on this legislative history as evidence of Congress's intent that the exemption in section 254(d) should be narrowly construed.[21] It is inconceivable that Congress would have intended for the Commission to use its limited exemption authority to make a blanket determination that the provision of interstate transport services by IXCs and dial-around and calling carrier providers is *de minimis* interstate telecommunications activity.

Moreover, AT&T's and WorldCom's proposal would not produce a "fair and equitable" contribution mechanism as required by section 254(d). The Commission simply cannot ignore the financial burden that universal service contributions create for providers and their customers. A shift of contributions entirely to LECs and wireless carriers would have a significant negative impact on their customer relationships. By limiting its focus to the fact that an end user's overall universal service payment may not increase under AT&T's and WorldCom's proposal, the Commission fails to adequately take this issue into account. Further, it is indisputable that the proposal would allocate a disproportionate share of the contribution obligation to LECs and wireless carriers that bears no relation to the level of their interstate telecommunications activities. The resulting contribution mechanism would not be consistent with the guiding

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[20] H.R. CONF. REP. NO. 104-458, Joint Explanatory Statement at 131 (1996).

[21] *See, e.g.*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶ 802 (1997*), aff'd in part, rev'd in part and remanded TOPUC v. FCC*, *cert. granted sub nom. GTE Serv. Corp. v. FCC*, 530 U.S. 1213 (2000), *cert. dismissed* 531 U.S. 975 (2000).

principle of competitive neutrality that the Commission has recognized must be a consideration in establishing a contribution mechanism.[22]

It is no answer to characterize the IXCs as contributing to universal service based solely on the fact that they would be contributing to the extent they also provide exchange access services. If anything, it would make more sense to require LECs to contribute only to the extent they also provide interstate long distance services, given that long distance services generate a significantly greater amount of interstate revenues. SBC, however, does not support either result. The better solution is that LECs should contribute based on their provision of exchange access services and IXCs should contribute based on their provision of interstate long distance service. The Joint Proposal produces exactly that result by assessing separate contributions on Access QSCs and Interstate Transport QSCs, which avoids unlawfully or unfairly excluding any class of interstate telecommunications providers from the universal service contribution base.

In addition, AT&T's and WorldCom's proposal is inherently regressive and would shift more of the burden of the universal service assessment to low-volume users. Consumer groups previously presented data showing that there may be a correlation between long distance usage and income, and they argue that a local-connection-only contribution mechanism would have an inequitable impact on low-income households. This confirmed the Commission's concern that a per-line or per-account methodology may be regressive for lower-income users. Such a result cannot be squared with the statutory requirement that universal service contributions be assessed in a fair and equitable manner. The Joint Proposal, by contrast, would allow low volume end

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[22] *Id.*, at ¶ 48 ("We conclude that competitively neutral rules will ensure that such disparities are minimized so that no entity receives an unfair competitive advantage that may skew the marketplace or inhibit competition by limiting the available quantity of services or restricting the entry of potential service providers.").

users to reduce their universal service charges by electing not to presubscribe to an interstate long distance carrier.

V. Conclusion

SBC supports the Commission's efforts to streamline and reform the current method of assessing contributions to the federal universal service fund and recovering contribution costs from end users. Given the Commission's concerns about the current revenue-based contribution methodology, the best way to reform the system is to adopt a contribution mechanism based on the number and capacity of a provider's interstate connections. The contribution obligation should extend to all providers of interstate telecommunications, regardless of the type of service provided and the technology platform used by the service provider. In addition, all providers that elect to recover their universal service contributions should be required to do so through an explicit line item charge on the end user's bill.

Respectfully Submitted,

/s/ Jeffry A. Brueggeman

Jeffry A. Brueggeman
Gary L. Phillips
Paul K. Mancini

SBC COMMUNICATIONS INC.
1401 Eye Street, NW, SUITE 1100
Washington, D.C. 20005
(202) 326-8911 – phone
(202) 408-8745 – facsimile

April 22, 2002

Its Attorneys

APPENDIX A:

Universal Service Fund Allocation Mechanism

USF Allocation Mechanism

- All providers of telecommunications, including common carriers, private service providers, Internet Service Providers (ISPs) and other content providers, regardless of technology platform or facilities ownership, should contribute to the federal universal service funding mechanism based upon their ***interstate telecommunications activities***.[1]

- Interstate telecommunications activity occurs when a service provider sells telecommunications services or services that incorporate a telecommunication component to end users for the transmission (in either direction) of interstate communications. These services will be referred to as ***qualifying services***.

- When an end user purchases a qualifying service from a service provider, a retail relationship is established which gives the end user the right to connect to, and utilize the provider's network. A ***Qualifying Service Connection (QSC)*** is the term that will be used to identify qualifying services provided through these retail relationships. The quantity of QSCs a service provider establishes is a good indication of the service provider's success in the marketplace and the service provider's overall level of interstate telecommunications activity. Therefore, QSCs should serve as the foundation for allocating the federal universal service funding obligation.

- An interstate transmission requires a connection so the end user can gain access to the network and utilize interstate transport. The access component and the interstate transport component may be provided through a variety of service architectures.

  - A service provider may offer an interstate transmission service using a seamless network that fully integrates the access and interstate transport components, e.g., a mobile wireless service provider.

  - An integrated solution can also be accomplished by a provider that bundles one carrier's access service with its (or another carrier's) interstate transport service to provide the end user with a single service capable of interstate transmission. For example, an ISP that offers broadband Internet access service[2] may be bundling a broadband capable access component, e.g., ILEC provided DSL, with self-provisioned interstate packet switched transport associated with the public Internet.

  - In other service architectures an end user may purchase the access component and the interstate transport component separately from more than one service provider. This

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[1] The Commission should determine that ISPs should not be treated as end users for universal service funding purposes. ISPs should be allocated a portion of the federal universal service funding obligation.

[2] See Section 231(e)(4) for a definition of Internet access service.

latter architecture is typical of a traditional long distance service in which a LEC provides the access component and an IXC provides the interstate transport component.[3]

- When the access component and the interstate transport components are provided separately, they will be labeled as an ***Access QSC*** and an ***Interstate Transport QSC***, respectively. The federal universal service funding mechanism should operate in a uniform manner to ensure competitive and technological neutrality such that no service architecture unfairly benefits from a particular technology platform or from the rules under which a provider has been required to operate. Uniformity should be accomplished by assigning an Access QSC and an Interstate Transport QSC to those services architectures described above that integrate or bundle an interstate access component with the interstate transport component. For example, an Access QSC and an Interstate Transport QSC will apply to wireless mobile service that has interstate transmission capability. A broadband Internet access service that connects an end user to the Internet through a packet-switched network will also have an Access QSC and an Interstate Transport QSC assigned to it.

- Most qualifying services are sold to end users based on the bandwidth capacity of the service. Service price typically increases as bandwidth increases. Therefore, capacity should be used as an additional indicator of telecommunications activity. Higher bandwidth services should receive a larger allocation of the federal universal service funding obligation because they represent more interstate telecommunications activity than lower bandwidth services. Capacity units will be assigned to Access QSCs and to Interstate QSCs based on the maximum bandwidth of the service provided to the end user. Capacity units will increase as the bandwidth available to an end user increases regardless of technology platform and separate capacity units will apply for connections to circuit switched networks and packet switched networks. Capacity units will be assigned as follows:

  - One-way paging = ½
  - Asymmetrical less than or equal to 6 Mbps = 1
  - Asymmetrical greater than 6 Mbps = 2
  - Centrex less than or equal to 64 Kbps = 1/9
  - Less than or equal to 64 Kbps = 1
  - Greater than 64 Kbps, less than 1.544 Mbps = 2
  - Greater than or equal to 1.544 Mbps, less than 45 Mbps = 5
  - Greater than or equal to 45 Mbps = 40

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[3] As ILECs become eligible to offer interstate long distance service and as IXCs enter the local service market the access component and the interstate transport component will be offered by a single carrier through bundling or network integration.

- End user interstate telecommunications service revenues will be used to define a service provider's level of interstate telecommunications activity associated with QSCs that are provided to end users on an occasional use basis. Calling card services and dial-around long distance services are examples of occasional use QSCs.

- A service provider that sells a qualifying service to an end user will be allocated a portion of the federal universal service funding obligation as follows:

  - Allocation for qualifying services provided on an occasional use basis will be determined by applying a percentage-based contribution factor to end user interstate telecommunications service revenues – the current contribution factor of 7.280% could serve as a reasonable starting point for the new occasional use contribution factor

  - Allocation for Access QSCs and Interstate Transport QSCs will be determined by multiplying the number of capacity units by the contribution factor. The contribution factor is determined by dividing the residual funding requirement, after accounting for funding contributions attributable to qualifying services provided on an occasional use basis, by the total capacity units.

- The following exceptions apply:

  - QSCs associated with Lifeline service will not be reported

  - De minimis interstate telecommunications activity will be based upon the overall revenue value of the funding obligation